



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0215; FRL-8999-02-R5]

**Air Plan Approval; Michigan; Partial Approval and Partial
Disapproval for Infrastructure SIP Requirements for the 2015
Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving elements of a State Implementation Plan (SIP) submission from Michigan regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The disapproval portion of this action does not begin a new Federal Implementation Plan (FIP) clock, because the FIPs are already in place. EPA proposed to approve this action on Friday, July 2, 2021 and received no adverse comments.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2019-0215. All documents in the

docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Olivia Davidson, Environmental Scientist, at (312) 886-0266 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0266, davidson.olivia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information.

On July 2, 2021, EPA proposed to approve most elements and disapprove an element of a submission from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) certifying that its current SIP is sufficient to meet the

required infrastructure elements under sections 110(a)(1) and (2) for the 2015 ozone NAAQS (86 FR 35247). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on August 2, 2021.

During the comment period, EPA received two comments on the proposed rule. The first comment was in support of the action, and a second comment was submitted by the New Jersey Department of Environmental Protection (NJDEP) pertaining to the prong 4 visibility requirements portion of which EPA is disapproving. EPA does not believe the comment received from NJDEP pertains to this action. At the time of submittal, EGLE referenced their five-year progress report from the first planning period approved on June 1, 2018 (83 FR 25375) which cites the regional haze FIP currently in place to show compliance with the Regional Haze Program, approved April 12, 2016 (81 FR 21672). The comment addressed an emission source affecting a Federal Class I area in New Jersey and asked that EPA consider the source's contribution to visibility degradation in future actions. Further, EPA received an email identifying a small typographical error in the table at the end of the proposed rulemaking identifying which elements we are approving, disapproving, or not taking action on. The table incorrectly stated that EPA was approving 110(a)(2)(D)(1)-(2), referred to as prong 1 and prong

2, interstate transport with significant contribution to nonattainment and interference with maintenance, respectively. The table is corrected in this action to reflect taking no action on said transport requirements. EPA will take action on those portions in a separate rulemaking. All of the comments received are included in the docket for this action.

We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110. Moreover, none of the comments address a specific regulation or provision in question, or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed.

II. Final Action.

EPA is approving most elements and disapproving an element of a March 8, 2019 submission from EGLE certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2015 ozone NAAQS. The disapproved prong 4 does not begin a new FIP clock, as FIPs are already in place in response to those deficiencies.

EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2015 Ozone
(A) - Emission limits and other control measures.	A
(B) - Ambient air quality monitoring/data system.	A
(C)1 - Program for enforcement of control measures.	A

(C)2 - Minor NSR.	A
(C)3 - PSD.	A
(D)1 - I Prong 1: Interstate transport - significant contribution to nonattainment.	NA
(D)2 - I Prong 2: Interstate transport - interference with maintenance.	NA
(D)3 - II Prong 3: Interstate transport - interference with PSD.	A
(D)4 - II Prong 4: Interstate transport - interference with visibility protection.	D
(D)5 - Interstate and international pollution abatement.	A
(E)1 - Adequate resources.	A
(E)2 - State board requirements.	NA
(F) - Stationary source monitoring system.	A
(G) - Emergency powers.	A
(H) - Future SIP revisions.	A
(I) - Nonattainment planning requirements of part D.	*
(J)1 - Consultation with government officials.	A
(J)2 - Public notification.	A
(J)3 - PSD.	A
(J)4 - Visibility protection.	*
(K) - Air quality modeling/data.	A
(L) - Permitting fees.	A
(M) - Consultation/participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
D	Disapprove
NA	No Action / Separate Rulemaking
*	Not germane to infrastructure SIPs

III. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 15, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for “Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS” immediately following the entry for “Section 110(a)(2) Infrastructure Requirements for the 2012 particulate matter (PM_{2.5}) NAAQS” to read as follows:

§ 52.1170 Identification of plan.

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(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP Provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * *	* * *	* * *	* * *	
Infrastructure				
* * *	* * *	* * *	* * *	
Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS	Statewide	3/8/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) Prong 3, D(ii), (F), (G), (H), (J), (K), (L), and (M). Disapproved CAA element 110(a)(2)(D)(i)(II) Prong 4. No action on CAA element 110(a)(2)(D)(i)(I).
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